S.B. CRIMINAL MISC.PETITION NO.1352/2006.
Tajji
Vs.
State
Date of Order:- 14/8/2006.

HON'BLE MR.JUSTICE HARBANS LAL

Mr. S.R. Yadav for the petitioner.
Mr. Arun Sharma P.P. for the State.

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The instant petition under Section 482 Cr.P.C. is directed against the order dated 27/4/2006 passed by the learned Additional Sessions Judge, Bandikui, District Dausa in Cr.Revision No.21/2006 vide which the revision filed by the petitioner against the order dated 31/8/2005 passed by the learned Civil Judge (Senior Division)-cum-Additional Chief Judicial Magistrate, Bandikui in Cr.Case No.402/2005 was dismissed as not maintainable.

The brief facts giving rise to this petition are that non-petitioner herein filed a private complaint against the petitioner and seven others in the court of learned Civil Judge (Sr.Division) cum-A.C.J.M., Bandikui for offences u/Ss.498A and 406 IPC with the allegation that she was married to Kasim on 5/12/1999. After marriage, she was harassed for demand of dowry and ultimately she was turned out of the house. The complainant-non-petitioner examined herself under Section 200 Cr.P.C. and her witnesses namely; Anwar and Jakir Khan u/S.202 Cr.P.C. On the basis of the

statements recorded under Sections 200 and 202 Cr.P.C. cognizance was taken against the petitioner on 31/8/2005 for offence u/S.498A IPC. The petitioner preferred a criminal revision petition which was ultimately dismissed as not maintainable vide order dated 27/4/2006 as indicated above. Hence, this petition.

Learned counsel for the petitioner has contended that petitioner is the Bua of Kasim Khan. Both reside in different villages. The petitioner has nothing to do with the day to day affairs of Kasim Khan. She cannot be interested in the dowry. There is no specific allegation of demand of dowry against her in the complaint or statements recorded under Sections 200 and 202 Cr.P.C. He has, therefore, submitted that the learned court below has wrongly and illegally held that the revision petition is not maintainable.

I have heard learned counsel for the petitioner who has submitted that there being no specific allegation against the petitioner, the proceedings as against her deserve to be quashed and set-aside. He has submitted that the allegations against her are general as they are against other persons but cognizance has been taken only against Kasim Khan, Tajji and Jahur.

A perusal of the statements of Bafat Khan, Anwar and Jakir reveals that there is allegation of demand of Rs.1 lac and a motorcycle on the part of accused. But the learned court below has on the strength of the case of **Adalat Prasad Vs. Rooplal Jindal : J.T. 2004(7) SC 243** held that the order issuing process is an interlocutory order against which no revision lies as the revision against such an order is barred under the provisions of Section 397(2) Cr.P.C.

But relying upon the decision in the case of **Madhu Limaye Vs. State of Maharashtra- [1977(4) SCC 551]** and **Commissioner of Income Tax Vs. Sun Engineering Works (P) Ltd.- [1992 (4) SCC 363]**, it has been held that the order issuing process is not an interlocutory order and revision could be preferred against such an order. In **V.K. Jain & Ors. Vs. Pratap V. Padode & another- [2006(2) Crimes 295]**, the Hon'ble Bombay High Court has observed that the question which arose for consideration in **Adalat Prasad Vs. Rooplal Jindal** (supra), **Subramanium Sethuraman Vs. State of Maharashtra- [2005(1) Mh.L.J. 626]** and **K.M. Mathew Vs. State of Kerala- [1992(1) SCC 217]** was whether the Magistrate could recall the process which was issued by him. In these cases, the question did not arise for

consideration whether a revision could be preferred before the Sessions Court against the order issuing process. More over, in **Adalat Prasad's** case as is clear from para 8, the said question is not gone into. It is not the ratio decidendi of the judgment in **Adalat Prasad's** case. A revision against the order issuing process is not maintainable.

In **Bhaskar Industries Ltd. Vs. Bhiwati Denim & Apparels Ltd.- [2002(1) MH.L.J. 81]** it has been laid down as to whether an order is interlocutory or not cannot be decided by merely looking at the order or merely because the order was passed at an interlocutory stage. The safe test is that if the contention of the petitioner who moves the superior Court in revision as against the order under challenge, is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not an interlocutory order inspite of the fact that it was passed during any interlocutory stage.

In the instant case, if the contention of the present petitioner in respect of the order issuing process is upheld, the proceedings in the said case would come to an end. Hence, in the light of the above decision, the order issuing process cannot be said to be an interlocutory order

even though it may have been passed at an interlocutory stage. A three Judge bench of the Apex Court in the case of **Madhu Limaye** (supra) has re-affirmed the decision in the case of **Amarnath**, the point that the impugned order of Magistrate taking cognizance and issuing process is not an interlocutory order.

In this view of the matter, therefore, the order of the learned court below dismissing the revision is not sustainable and deserves to be set aside.

Consequently, this petition is allowed and the order dated 27.4.2006 passed by the learned Addl. Sessions Judge, Bandikui Distt. Dausa in Criminal Revision No.21/2006 is quashed and set aside and the matter is remitted to the said learned Addl. Sessions Judge with the direction to decide it afresh on merits.

(HARBANS LAL), J.

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